

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE

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E.O. 11652: N/A

TAGS: CGEN

SUBJECT: NOTARIALS: COMMANDING OFFICER'S PERMISSION
BEFORE MILITARY PERSONNEL MAY MARRY AND ITS EFFECT UPON
OUR NOTARIAL ACTIONS

REF: A) TOKYO 12729, B) TOKYO 12321, C) STATE 170995,
D) TOKYO 11967

1. DEPT'S CONTACTS WITH DOD INTERNATIONAL LAW SECTION OF
JUDGE ADVOCATE GENERAL'S OFFICE CONFIRMS EXISTENCE OF DOD
INTERNAL REGULATION THAT MILITARY PERSONNEL SHOULD OBTAIN
THEIR COMMANDING OFFICER'S PERMISSION TO MARRY WHILE OVER-
SEAS.

2. SINCE THIS IS A DOD REGULATION, IT DOES NOT, RPT NOT,
IMPOSE UPON EITHER THE DEPT OR OUR FOREIGN SERVICE POSTS
AN OBLIGATION TO ENFORCE THE REGULATION. AS A COURTESY,
IT IS OUR UNDERSTANDING, WE MAY FREQUENTLY ALERT MILITARY
PERSONNEL TO THE REQUIREMENT BEFORE TAKING AN AFFIDAVIT
OF ELIGIBILITY TO MARRY. THERE IS NO "ARRANGEMENT" HOWEVER,
WITH DEPT OF DEFENSE REGARDING THIS MATTER. IF THERE WERE,
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IT WOULD BE WRITTEN IN OUR REGULATIONS.

3. PARA 5 OF REFTTEL A IS CORRECT, I.E. THAT THERE, IS ONLY
ONE BASIS FOR REFUSAL OF A NOTARIAL SERVICE AND THAT IS
CONTAINED IN 22 CFR 92.9. A PART OF THAT SECTION READ:
"A CONSULAR OFFICER IS ALSO AUTHORIZED TO REFUSE TO PER-
FORM A NOTARIAL ACT IF HE HAS REASONABLE GROUNDS FOR

BELIEVING THAT THE DOCUMENT WILL BE USED FOR A PURPOSE PATENTLY UNLAWFUL, IMPROPER OR INIMICAL TO THE BEST INTERESTS OF THE UNITED STATES. REQUESTS FOR NOTARIAL SERVICES SHOULD BE REFUSED ONLY AFTER THE MOST CAREFUL DELIBERATION."

4. A CONSULAR OFFICER'S ACTIONS WITH RESPECT TO TAKING AN AFFIDAVIT FOR PURPOSES OF ESTABLISHING TO A FOREIGN GOVERNMENT AN INDIVIDUAL'S ELIGIBILITY TO MARRY IS, IN THE DEPT'S VIEW, AS A GENERAL PROPOSITION, VERY MINISTERIAL. (AFTER ALL, WE GENERALLY WILL NOT KNOW WHETHER AN INDIVIDUAL HAS OR DOES NOT HAVE A LEGAL IMPEDIMENT TO MARRY.) HOWEVER, THERE MAY BE EXCEPTIONS IN THIS AREA ESPECIALLY WITH RESPECT TO MILITARY PERSONNEL FOR SECURITY OR VISA REASONS. OBVIOUSLY, IN THIS PARTICULAR CASE THERE WOULD BE NO VISA PROBLEM SINCE THE ALLEGED SPOUSE IN THIS CASE IS A US CITIZEN. AS FOR THE QUESTION OF WHETHER THE FIANCEE OF A MILITARY OFFICER COULD PROVE A POTENTIAL SECURITY RISK, THAT IS NOT GENERALLY WITHIN OUR CAPABILITIES TO DETERMINE. IF, HOWEVER, IT WERE OBVIOUS THAT AN INDIVIDUAL TO WHOM A MILITARY OFFICER OR ENLISTED MAN DESIRED TO MARRY WAS INELIGIBLE FOR IMMIGRATION PURPOSES AND/OR MAY VERY WELL PROVE TO BE A SECURITY RISK TO THE UNITED STATES, THEN THERE MIGHT BE GROUNDS FOR REFUSAL OF THE EXECUTION OF AN AFFIDAVIT TO MARRY BEFORE A CONSULAR OFFICER ON THE BASIS OF 22 CFR 92.9. IN THIS UNCLASSIFIED

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CASE, HOWEVER, THERE HAS BEEN NO INTIMATION OF EITHER OF THESE GROUNDS. THE EMBASSY CERTAINLY HAS ASSURED THE NAVAL OFFICER OF THE EXISTENCE OF THE REGULATION REGARDING THE NEED FOR OBTAINING PERMISSION BEFORE MARRYING. IF HE FAILS TO OBTAIN THAT PERMISSION, THEN THE MILITARY AUTHORITIES, IF THEY DEEM IT NECESSARY, MAY TAKE WHATEVER DISCIPLINARY ACTION THEY WOULD DEEM APPROPRIATE. WE DO NOT THINK THAT THE MILITARY WOULD OBJECT TO PERFORMING THE NOTARIAL SERVICE SINCE WE ARE NOT CHARGED WITH ENFORCING THEIR REGULATIONS. CHRISTOPHER

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